

Criminal Misc.No.51436-M of 2006 (O&M)

Bhupinder Goyal and another Vs. State of Punjab

Present: Mr.Akshay Bhan, Advocate,
for the petitioners.

Mr.M.C.Berry, Senior DAG, Punjab,
for the State.

Mr.Puneet Bali, Advocate,
for the applicant.

The petitioners have filed this petition seeking grant of anticipatory bail. They are accused in FIR No.40 dated 16.5.2002. It is disclosed that the petitioners had earlier filed petition before this court for grant of the same relief. While granting anticipatory bail in Criminal Misc.No.54399-M of 2002, this court, *inter-alia*, observed that the custodial interrogation of the petitioners was not called for in view of the nature of the allegations. It was also noticed that the petitioners had joined investigation pursuant to the interim order granted to them on 30.12.2002. Interim anticipatory bail was accordingly confirmed. However, this was subject to the condition reading “they are granted anticipatory bail till conclusion of investigation or three months whichever is earlier during which the petitioners will be free to apply for regular bail to the concerned court in accordance with law. If bail is declined, the petitioners will be given ‘two weeks’ time to apply for bail in this court.” The petitioners had filed the present petition apprehending that they may not be arrested as Investigating Officer had issued notice to them under Section 160 Cr.P.C. It is also disclosed that after investigation, the police had filed a cancellation report before Illaqa

Magistrate, Ferozepur on 24.5.2005, but the same, however, was returned to the concerned police officer for submission through proper channel on 11.7.2005. This cancellation report was again re-submitted on 17.12.2005, but this was returned to the police by the court for further investigation on 14.1.2006. It is thereafter that the notice appears to have been issued to the petitioners for joining investigation.

While issuing notice of motion, arrest of the petitioners was stayed. During the pendency of the petition, Criminal Misc.No.66752 of 2006 was filed by Rajinder Aggarwal son of Shri Jai Chand Aggarwal, resident of H.No.724, Sector 8-C, Chandigarh for being impleaded as respondent No.2.

The counsel for the parties have been heard.

Mr.Puneet Bali, the counsel appearing for the applicant would first contend that present petition seeking anticipatory bail is not maintainable as the earlier petition filed by the petitioners was allowed subject to certain conditions, which the petitioners did not comply. He would accordingly submit that they would not deserve any concession from this court as they had not availed benefit of the order made in their favour in the earlier petition. As already noticed, the arrest of the petitioners was stayed subject to the condition that this was to continue till conclusion of investigation or three months whichever is earlier and during this period they were to apply for regular bail.

Since the investigations admittedly were in progress, it could be expected from the petitioners that they would apply for regular bail within a period of three months in view of the conditions

imposed by this court. It is not disputed that the petitioners had not applied for regular bail. In this regard, Mr.Akshay Bhan would submit that the police, after investigation, had filed a cancellation report and accordingly there would have been no necessity for the petitioners to apply for regular bail. This is countered by Mr.Bali by pointing out that the cancellation report was submitted on 24.5.2005, whereas the period of three months had expired in February/March, 2004. Faced with this situation, Mr.Akshay Bhan makes an oral prayer that the petitioners may now be granted time to file regular bail application. This prayer is vehemently opposed by Mr.Bali not only on the ground that he has to seek such a permission in an earlier petition, but also on the ground that the petitioners had attempted to mislead this court by stating wrong/misleading facts. He has, in this regard, made reference to the averment made in the petition in para 3(d). In particular, Mr.Bali will make a mention to the averment where reference is made to the order passed by the Hon'ble Supreme Court. As per counsel, the petition filed by the petitioners before the Hon'ble Supreme Court was dismissed by just mentioning that the petitioners may file a review, which has been given entirely different colour in the petition. The counsel would say that a person, who has not come to the court with clean hands, does not deserve any concession or sympathy and should be dislodged on this ground alone.

On the one side is the plea of applicant-respondent, who, while standing on technicalities, seeks dismissal of this petition and on the other side is the question about liberty of a citizen. This is a case where the petitioners came before this court and while

protecting them, this court found that there was no requirement of custodial investigation. Their arrest was stayed and they were required to seek regular bail within period as stipulated. The matter is investigated and the record would show, which is not disputed by the counsel for the applicant-respondent, that the police had submitted a cancellation report. Are the petitioners still required to be taken in custody? For what purpose, the petitioners are needed to be arrested when the police, after investigation, has found it appropriate to submit a cancellation report? As observed by the Hon'ble Supreme Court, personal liberty of a person is deprived when one is refused bail. The deprivation of a freedom by refusal of bail is not for punitive purposes. What is required to be seen is if there is any chance of a person fleeing the justice. As was observed by the Hon'ble Supreme Court in Babu Singh and others Vs. The State of Uttar Pradesh, AIR 1978 Supreme Court 527 that "fleeing justice must be forbidden but punitive harshness should be minimised." The applicant-respondent seems to be praying for punitive custody for the petitioners and have not said anything, which could justify the need for custody. At one stage it was considered that the custodial interrogation of the petitioners is not called for and it is now pleaded that they be taken in custody when police has now submitted cancellation report. The position, if any, has not changed to any disadvantage for the petitioners. The law and equity would rather change in their favour more favourably as by now the police has, at one stage, found this case to be a fit for filing cancellation report. Even if the petitioners have not applied for regular bail, the earlier order in their favour can not be ignored. If investigation had found

something against the petitioner, they could have been faulted for avoiding regular court. No case for taking the petitioners in custody is made out. The petitioners are granted time to file a regular bail application before the trial court within a period of two weeks from the date of receipt of the copy of this order. In case the prayer of the petitioners for regular bail is declined, they would get another two weeks to approach this court.

The present petition would accordingly stand disposed of.

March 15, 2007
ramesh

(RANJIT SINGH)
JUDGE